

87-2121

No. A-808

IN THE SUPREME COURT OF THE UNITED
STATES

Supreme Court, U.S.

FILED

JUN 27 1988

JOSEPH F. SPANIOL, JR.
CLERK

October Term, 1987

RAYMOND DOBARD

Petitioner

v.

OSCAR DASTE & SONS, INC.

Appellee

Petition — for a Writ of
Certiorari to the Supreme
Court of Louisiana and for
Summary Reversal

Raymond Dobard
Petitioner in pro se
1866 Alcatraz Avenue
Berkeley, CA 94703
415/ 658-5344

June 24, 1988

73 07



QUESTIONS PRESENTED

I. Due Process of Law

1. Constitution due process laws require sufficient notice and a fair and adequate hearing; and further implies the right of the person affected thereby be present before the tribunal which pronounces judgment upon the question of Life, Liberty, or Property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law. Zeigler v. Railroad Co., 58 Ala. 599. Now the ultimate question is whether petitioner, Raymond Dobard, received the essential elements of "due process of laws," affording him an opportunity to be heard and to defend in orderly proceeding adapted to nature of the case, or his guarantee of "due process" that requires every man have protection of day in court and benefit of general law, (i) when no one

appeared at the trial on May 13, 1986 to legally represent petitioner; and (ii) his attorney, by neglect, or misconduct, abandoned his case during the beginning of the trial and without just cause; and (iii) petitioner's serious illness and distress prevented his traveling from Berkeley, California to New Orleans for appearance at trial for an opportunity to be heard or refute evidence going into the record.

2. Whether it was an abuse of discretion for the trial court not to consider reasonable alternatives in lieu of putting into effect and invoking an unconscionable judgment and order, bearing in mind that no one appeared at the trial to legally represent petitioner as safeguards for the protection of his individual rights when applied to judicial proceedings and constitutional "due process of law."

3. Whether the evidence was sufficient to justify the trial court's exertion of power during the judicial proceeding, affecting the enforcement and protection of private rights in the allowing of petitioner's attorney to

withdraw and abandon petitioner's claim and defense in the proceedings and during the beginning of the trial, also bearing in mind that; (i) (a) There was no evidence presented whereas Petitioner was served with the notice of motion to withdraw; and (b) no written permission from petitioner, nor verified evidence presented or shown to the court whereas petitioner approved his attorney's withdrawal from his case; as was required by the court order dated the 28th day of April, 1986; (see Exhibit R-9, on page 3-5 of the SEPARATE appendix herein, to review the Judgment-order signed on the 28th day of April 1986, forbidding Petitioner's attorney from withdrawing from his case, and further stating that the motion to withdraw by petitioner's attorney was DENIED. Petitioner was fully relying on the court's denial of his attorney's motion to withdraw from his case and petitioner informed his attorney that he was fully relying on him for responsible legal representation and protection of his private rights within the proceeding, due to his inability to make

QUESTIONS PRESENTED

an appearance in April or May of 1986 for trials due to his serious illness and distress, that precluded travelling from Berkeley, California to New Orleans for an extensive trial during that period of time; and (ii) There was no indication that petitioner had acquired an attorney for the enforcement of his private rights, his just claim, his valid reconventional demands, and his legal defense in the proceedings.

4. Whether petitioner should be deprived of his rights to his day in court and equal protection of the laws by the neglect, or misconduct, or the "stepping aside" of his attorney who breached a fiduciary duty to client and to the code of professional responsibility of the legal profession relative to making legal counsel available, especially when client (petitioner) has paid the legal fees in advance for the full and complete trial litigation, of which attorney failed to reimburse client for the unused portion of the paid trial fee.

5. Whether there was a judicial irregularity, neglect, or inadvertence for the trial court commissioner, Avis Marie Russell, ad hoc judge, sitting for Honorable Louis A. Di Rosa, in her allowing petitioner's attorney to withdraw and abandon petitioner's claim and defense in the proceedings on 5-13-86 being fully aware that she previously considered, at judgement hearing on April 21, 1986, the motion to withdraw of Petitioner's attorney, that was DENIED by her and Judge Di Rosa, and the denial judgment-order was signed by Avis Marie Russell for Judge Louis Di Rosa on the 28th day of April, 1986. Moreover, the denial order was at no time ever set aside or vacated. The order was in full force and effect on 5-13-86 when commissioner Avis Marie Russell unwarrantedly and arbitrarily allowed petitioner's attorney to withdraw. (See Exhibit R-9, the judgment-order signed on the 28th day of April, 1986.)

6. Whether there was a misapplication of justice by the trial court in rendering the full judgment and all costs against petitioner on May 13, 1986, in the full amount of

\$5,399.02, with no alternatives, and being fully aware and "forseeably" that the withdrawal and abandoning of petitioner's case by his attorney would leave no safeguards for the protection of petitioner's fundamental rights at the trial which the system of jurisprudence has always recognized; or whether there was a misapplication of justice because relief and equal protection and equal justice was denied petitioner because of the neglect, or misconduct of his attorney that was not of petitioner's fault.

II. MISAPPREHENSIONS OF THE AFFIRMED

OPINION, OF THE COURT OF APPEAL FOR THE
FOURTH CIRCUIT OF THE STATE OF

LOUISIANA, DATED DECEMBER 15, 1987

7. On or about May 16, 1987 petitioner appealed the judgment of the Civil District Court for the parish of Orleans, State of Louisiana (trial court) that rendered a \$5,399.02 judgment on May 13, 1986 in favor of plaintiff (contractor) and against defendant, petitioner herein. The gravamen of petitioner's appeal, along with other issues, was the "Due Process of Laws" violations guaranteed by the Fourteenth Amendments to the United States Constitution alleging that:

(i) Petitioner was not granted his real day in court and deprived of an opportunity to be heard in a legal proceeding; (ii) petitioner was deprived of his fundamental rights by neglect or misconduct of his attorney; (iii) Petitioner was deprived of "Due Process of Laws" due to his distress and serious illness that prevented petitioner's appearances during trials on April 21, 1986, and twenty-four days

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later at trial on May 13, 1986. (See pages 58-65 of Narrative of Facts for accreditation medical statements to substantiate distress and serious illness.) The opinion and judgment of the Court of Appeal of the Fourth Circuit of Louisiana averred, acknowledged, raised and passed on the following issues: (a) On "April 21, 1986 Mr. Foto (Petitioner's attorney) attempted to withdraw as Dobard's attorney. The court refused unless Foto could produce Dobard's permission to do so"; (b) averring that Dobard's (Petitioner) "dilatory tactics as being a claim for Due Process violations"; (c) further averring "we find no "Due Process violations given the facts and history of this case; (d) "Dobard claims he was denied a fair trial because of lack of representation and/or ineffective counsel"; and (e) "Petitioner was granted a fair trial on May 13, 1986."

Now the ultimate questions are as follows:

Whether verified material "due process" evidence was shown and presented to the Court of Appeal by the trial court, as just cause,
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for its affirmed determination and opinion
regarding the trial court's allowing petition-
er's attorney to abandon petitioner's case in
the proceeding and during the beginning of the
trial on May 13, 1986, bearing in mind that;
(i) the material evidence of Exhibit R-9, the
trial court's judgement-order dated April 28,
1986, denied Foto's motion to withdraw; and
(ii) the transcript of the trial court's
proceedings dated May 13, 1986, pages 8 - //
(IN SEPARATE BOUND APPENDIX)
depicted and averred that Philip Foto was the
attorney of record for petitioner Dobard,
during the beginning of the trial on May 13,
1986; (iii) moreover, the history of the case
revealed that Petitioner's attorney by neglect,
misconduct or stepping aside, remained silent
in a position of trust, and negligently failed
to comply with the trial court's Pre-Trial
Order of January 17, 1986, that was held with-
out notice or knowledge to petitioner. (See
Exhibit R-7, Pre-Trial Order of 1-17-86 SEPARAT-
ELY BOUND in appendix at PP, 1-2); and (iv)
the history of the case further revealed that
no one appeared at the trial on May 13, 1986

to legally represent Petitioner, now the
ultimate question is on what legal grounds
did the court of appeal for the Fourth Circuit
of Louisiana base its erroneous conclusions
on 12-15-87 whereas it averred in its affirmed
judgment opinion that it found no "due process
violations; or Dobard was not denied a fair
trial because of lack of legal representation
and/or ineffective counsel; or Dobard's dila-
tory tactics as being a claim for his due
process violations; and finally that Petitioner
was granted a fair trial on May 13, 1986.
Where is the verified material evidence based
on the principles of law and fact? Or whether
the question of fact or liability was conclu-
sively presumed against Petitioner??

8. Whether petitioner was afforded a fair
trial without an attorney or legal representa-
tion or anyone appearing in his behalf?

9. Whether petitioner was afforded a
fair trial without his being granted the oppor-
tunity to be heard, by testimony or otherwise,
and to have the right of controverting, by
proof, every material fact which bears on the

question of right in the judicial proceedings
involved on May 13, 1986, and the judgment
therefrom.

III. CONSPIRACY-FRAUD AND MISREPRESENTATION

10. On pp. 2-3 of appellant's (petitioner's) opening brief filed in the Court of Appeal Fourth circuit of State of Louisiana, CA-7591, dated 5-16-87, whereas petitioner/appellant relied on two Louisiana statutes as a statement of principles of law relied upon in his appeal. Cited was LSA Civil Code RS 9: 4802 relative to authentic evidence and authentic act that legally stated that all matters bearing upon the execution, the interpretation and validity of the contract between a contractor and the owner for the repairs of immovable property shall be reduced to writing, signed by the parties thereto by an authentic act, or private signature, and shall be recorded in the office of the clerk of the court or the Recorder of Mortgages. Such recordation shall preserve the privilege on the building in favor of the contractor. Petitioner also cited in his opening brief LSA Civil Code 2776, that clearly stated that; "it is held that agreements between a contractor and an owner

exceeding \$500.00 must be reduced to writing and recordation of statement is essential to preserve the privilege. Petitioner draws this Honorable court's attention to the ~~SEPARATE~~ appendix of PP. 20-32 regarding the affirmed judgment-opinion of the Court of Appeal Fourth Circuit of Louisiana dated 12-15-87, that avers as follows: "Dobard's argument that the contract is void because it was not recorded has no merit. Dobard argues the requirement of La. R.S. 9: 2756 (sic) requires recordation. That statute has no application to the issues before us. We find no error in the trial court's judgement. AFFIRMED. Now the ultimate question is whether there was a judicial irregularity, a misapplication of justice, neglect, or inadvertence for the court of appeal to make a finding, opinion and determination on a completely irrelevant statute that was not mentioned whatsoever in petitioner/appellant's opening brief and to wholly confirm the trial court erroneous judgment and add nothing except "affirmed" to a fraudulent misrepresentation induced by the

QUESTIONS PRESENTED

appellee upon the trial court, and as a fraud on petitioner, being the result of an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing (petitioner's private property, writ of attachment order, and individual rights) belonging to petitioner or to cause him to surrender a legal right; or whether the false suggestions, or the suppression of truth in averring to La. R.S. 9: 2756 was based on fraud by appellee, and tainted by fraud, for the purpose of one individual to get advantage over another.

11. "Fraud and Overreaching" imposed upon Petitioner and the Court by Appellee Contractor.

LSA Civil Code Article 2745 clearly states that (Independent Contractor) an individual cannot be his own employee. Contractor who agrees to renovate owner's home on a "cost plus ten percent basis was not entitled to recover for his own labor, insurance and overhead plus ten percent of such charges, absent

a negotiated agreement between parties for inclusion of such items as costs. Foster v. Soule, App. 1975, 310 So. 2d 170, writ denied 3/3 So. 2d 827. Petitioner draws to this Honorable court's attention that appellee contractor illegally overreached and overcharged petitioner both as a contractor and as an employee in an overcharged scheme in the amount of \$2,243.17. See exhibits D-6 dated 11-5-81 and D-10 (Plaintiff's P-8) dated 11-30-81 in appended appendix as labor and material statements presented to the trial court by appellee contractor. The trial court awarded appellee judgment on this fraud that was raised and passed on by the court of appeal Fourth Circuit and the Supreme Court of the State of Louisiana.

Now the ultimate question is whether petitioner was deprived of a fair trial by errors, irregularities, misapplication of justice, misapprehension, abuse of discretion or fraud induced by appellee contractor imposed on both the courts and petitioner in violation of the laws of Louisiana regarding

QUESTIONS PRESENTED -15-

CC art. 2745 (See Exhibits D-6 and D-10
(Plaintiff's P-8) on pp. ____ and ____ of the
appendix herein, and separately attached.

IV. CONSPIRACY TO DEPRIVE PETITIONER OF
HIS CIVIL RIGHTS BY BEING DENIED ACCESS
TO THE TRIAL COURT DUE TO HIS RACE OR
NOT BEING AN ATTORNEY.

On January 3, 1983, the trial court
Judge Honorable Louis A. Di Rosa, arbitrarily,
prejudicially and discriminatorily denied
petitioner access to his court, because peti-
tioner was black and not a lawyer. This denial
of access to his court is construed to be a
constitutional deprivation in denial of peti-
tioner civil rights and prohibited by the
United States Constitution as more fully
described in 42 USC 1985 (2) Petitioner
was granted access to Judge Di Rosa's court
for imposing an unconscionable judgement upon
him.

12. Now the ultimate question is whether
the denial to access of the court on January
3, 1983 deprived petitioner of his Civil Rights

by excusable racial discrimination veiled as
he not being an attorney; or whether the denial
to access deprived him of a fair trial bearing
in mind that petitioner was fully prepared for
trial with all of his professional witnesses
present in court and ready to testify; or
whether Judge Di Rosa was compelling petitioner
to meet extreme conditions because of his
race. Petitioner draws this Honorable court's
attention to 42 USC 1985 (2).

42 USC 1985, gives to every citizen involved in litigation the right to be free from a conspiracy for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any state or territory, with intent to deny any citizen the equal protection of the laws, or to injure him, or his property for lawfully enforcing or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws.

This denial of access issue was raised and passed on by both State courts. However, both the court of appeal 4th Circuit and the Supreme Court of Louisiana remained silent on this denial of access issue by Judge Di Rosa so thus it must be construed to be rejected.

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V. PRE-TRIAL ORDER OF 1-17-86

(EXHIBIT R-7)

13. At the preliminary conference held on the 17th day of January 1986, by Pre-Trial Order the matter was set for trial on the 21st day of April 1986 by Avis Marie Russell, Commissioner and Judge ad hoc sitting for Honorable Louis A. Di Rosa. Petitioner Dobard was absent due to lack of notice, however, his attorney, Philip Foto was present. Now the ultimate question is whether there was a valid and verified legal material showing presented to the court that reflected petitioner was given sufficient notice to make an appearance at this preliminary conference; or whether there was verified material evidence presented to the court, thereafter, reflecting that petitioner was made aware, or given notice, of the set trial date of 4-21-86, and before April 19, 1986, when his attorney's secretary informed him of the trial scheduled in two days, by a long distance call from New Orleans to Berkeley, California; or whether it would have imposed an

"extreme hardship" on petitioner to try to
prepare for a trial 2400 miles away, within
two days, bearing in mind petitioner's dis-
tress and serious illness; or whether it was
an abuse of discretion, or a misapplication of
justice for the trial court to assess and
render a judgment against petitioner for
\$750.00 and \$53.00 costs, when petitioner was
not made aware of the trial on 4-21-86 by
neglect or misconduct of his attorney and
whereas his primary concern at the trial of
April 21, 1986 was his motion to withdraw as
petitioner's attorney and with no verified
proof presented to the court that petitioner
was made aware of his attorney's notice of
motion to withdraw as petitioner's legal repre-
sentative. (See Exhibit R-9, Judgment, dated
28th day of April, 1986, whereas the court
assessed sanctions and judgment against peti-
tioner for \$750.00 plus \$53.00 costs and where-
as petitioner's attorney's motion to withdraw
as his attorney was denied. Whether petitioner
was deprived of a fair trial by the neglect or
misconduct of his attorney in regards to the

pre-trial order of January 17, 1986 whereas
he neglectively allowed vital discovery mat-
ters essential and necessary to the merit of
petitioner's litigation and claim to prescribe,
including not filing the names of petitioner's
witnesses that were previously and timely
given to him. (He remained silent in a posi-
tion of trust from January 17, 1986 to April
19, 1986 during which said period petitioner's
discovery and other legal rights prescribed
while having complete professional responsi-
bility for the work product.)

VI. EXCUSABLE DISCRIMINATION

14. Honorable Louis A. Di Rosa selected
and engaged commissioner Avis Marie Russell as
an ad hoc judge to hear the case for him in
this action with the trial dates set
for April 21, 1986 and May 13, 1986. Petitioner
informs this Honorable court that commissioner
Avis Marie Russell is black and petitioner has
been informed and led to believe that Judge
Di Rosa engaged her to hear the case for him
to provide an easy means of justifying racial

discrimination by allowing another black person to rule and make his judgment for him. Now the ultimate question is whether this is construed to be "Excusable Discrimination," and a violation of petitioner's Civil Rights ?

VII. RECONVENTIONAL DEMANDS A VALID
PROPER TY RIGHT

15. The trial court remained silent on the disposition of petitioner's valid Reconventional Demand in the amount of \$22,090.87, and thus it must be construed that they rejected same without just cause as an arbitrary or capricious "taking" of a substantial property right without "Due Process." The trial court should have retained jurisdiction on the matter. Now the ultimate question is whether petitioner was deprived of his property rights, that are fully protected by the Fifth and Fourteenth Amendments to the United States Constitution, by the trial court in not allowing petitioner his right to amend his pleading relative to the alleged defect of improper service bearing in mind that during a course of legal proceedings according to those rules and principles which

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have been established in our systems of jurisprudence for the enforcement and protection of private rights of when a pleading has a defect remediable by amendment is not to be dismissed; rather amendment is to be allowed. Simms v. Braren, App. 1971, 252 So. 2d 459; and Suarez v. Suarez, 104 Southern Reporter, 616. (This issue of Reconventional Demand was raised and passed on by both state courts.)

VIII. QUESTIONS RELATIVE TO TRIAL COURT
COMPELLING PETITIONER TO MEET PREJUDICIAL,
EXTREME AND OPPRESSIVE CONDITIONS IN VIOLATION
OF CIVIL RIGHTS AND DEPRIVATION OF PROPERTY RIGHTS.

(16) In re: The pre-trial order (exhibit R-7, dated 1-17-86, separately appended on pp. 1-2 in appendix) which set the matter for trial on the 21st day of April, 1986 at 10:30 a.m. At the trial on 4-21-86 Petitioner was absent due to lack of sufficient notice. There was no verified material evidence presented or shown to the court regarding sufficient notice to petitioner Dobard to appear at said trial, with the exception of a telephone call on the late afternoon of 4-19-86 from petitioner's attorney's secretary, giving him a one day notice of trial. Now the ultimate question is whether this course of conduct by petitioner's attorney of insufficient notice, or neglect, or misconduct and whom petitioner legally relied on for legal representation caused petitioner Dobard to have to meet extreme conditions of being trial ready within one day for an extensive trial in New Orleans, 2400 miles away, and

eventually deprived him of Federally protected prop-
erty rights; or whether it was an abuse of
discretion; or misapplication of justice; for
Honorable Louis A. Di Rosa to render a judg-
ment against petitioner in the amount of
\$750.00 plus \$53.00 costs and charging him
with causing undue delay in these proceedings,
when no verified material evidence was pre-
sented or shown to the court reflecting that
petitioner was given sufficient notice to
appear at the trial on 4-21-86. See Exhibits
R-7, Pre-Trial Order of 1-17-86 and Exhibit
R-9, Judgment rendered on 4-28-86. (Petitioner
was informed by the deputy clerk of the Civil
District Court, Mr. Michael J. Tranchina, that
there was no recorded transcript taken at the
trial of 4-21-86, therefore petitioner was not
made access to these proceedings.)

(17) At the scheduled trial of January
3, 1983 of these proceedings, Honorable Louis
A. Di Rosa denied petitioner access to his
court either because petitioner was black or
not a lawyer and reset the matter in three days
to January 6, 1983 and further ordered petitioner

not to come back in pro se and to hire a lawyer in New Orleans. This three days of delay caused petitioner to have to lay over in New Orleans causing him great inconvenience, humiliation, and additional expenses for hotel and car & etc; Now the ultimate question is whether Honorable Di Rosa compelled petitioner to have to meet "Extreme Conditions" by denying him access to the court on January 3, 1983 when petitioner was fully trial ready and with all of his expert witnesses present and ready to testify; or whether his "sua sponte" continuance of the trial on 1-6-83 caused petitioner to meet "extreme conditions" as a veil of "Racial Discrimination" ?

(18) Petitioner appeared before Honorable Di Rosa on November 21, 1986 travelling to New Orleans from Berkeley, California for a five minute motion hearing for setting aside the commissioner's recommended judgment. Honorable Di Rosa continued this 5 minute motion hearing to December 12, 1986 with no reason given to petitioner for impeding the proceedings and continuing this five minute

QUESTIONS PRESENTED

motion hearing. Bearing in mind that petitioner had travelled 2400 miles to attend this five minute hearing from Berkeley, California to New Orleans and would be compelled to incur additional expenses to travel again in three weeks for this very same five minute hearing. Now the ultimate question is whether this impediment of these proceedings by the "sua sponte" course of conduct by Honorable Louis A. Di Rosa, cause petitioner to meet extreme and oppressive conditions? Especially when Judge Di Rosa's determination was preconceived on November 21, 1986 and rendered wholly on December 12, 1986 as full judgment for the full sum of \$5,399.02, plus interest, plus all costs and added nothing but approval of the commissioner's recommended judgement and overrule to petitioner's motion.

(19) During the trial proceedings on May 13, 1986 the court commissioner, Honorable Avis Marie Russell, informed petitioner's attorney, Mr. Philip Foto, that he was the legal representative and attorney for petitioner because "he didn't file a motion to with-

draw." Now the ultimate question is whether
the trial court failed to furnish a protection guar-
anteed under U.S.C.A. Const. Amend. Fourteen, by
allowing petitioner's attorney to abandon petitioner's
case, his just claim & defense; whether the trial
court prejudicially imposed "forseeable"
extreme conditions upon petitioner by allowing
petitioner's attorney to abandon petitioner's
legal representation during the proceedings,
and thus depriving him of a fair trial and
knowing full well that there would be no one
to legally represent petitioner's just claim
or defense in said proceedings? (See court
reporter's transcript of testimony taken
during the trial proceedings of May 13, 1986
on pages 6 through 12 of separately
appended appendix.)

LIST OF PARTIES TO THE PROCEEDING WHOSE JUDGMENT
IS SOUGHT TO BE REVIEWED

Civil Action No. 82-2723, Civil District
Court, Parish of Orleans, Div. "D",
State of Louisiana.

Judge: Louis A. Di Rosa;
Commissioner and Judge
Ad Hoc: Avis Marie Russell

No. CA-7591, Court of Appeal Fourth Circuit,
State of Louisiana;
Judges: Robert L. Lobrano, Denis A. Barry
and Charles R. Ward

No. 88-C-0355, The Supreme Court of the
State of Louisiana.
Judges: JCW, JAD, PFC, WFM, JLD, HTL,
and LFC.

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- On 1-3-83, Judge Di Rosa denies
petitioner access to his court for
pleading in pro se as "sublte" and
veiled "racial discrimination" and
unequal application of justice . .
39-40, 42-44, 57-59

- On November 21, 1986, Judge Di Rosa
"forseeably and prejudicially"
imposed extreme and oppressive con-
ditions upon petitioner, by abusing
discretion, and unwarrantedly con-
tinuing a 5 minute motion hearing,
without just cause, to December 12,
1986, thereby compelling petitioner
to make two round trip travels from
California to New Orleans for one 5
minute motion hearing, "veiled" as
racial discrimination 44-45

- "Excusable Discrimination"
Judge Di Rosa engaged a black

commissioner to hear his case
 and make his judgment for him as
 an easy means of justifying racial
 discrimination and depriving peti-
 tioner of a fair trial 45-46

- 42 USC 1985(2), gives to every
 citizen involved in litigation the
 right to be free from conspiracy . . . 46
 (also referenced in separate appendix
 on page 37).

- Petitioner's serious illness and
 deafness prevented total communication
 with court or counsel, or appearance
 at trial on May 13, 1986 and same was
 conveyed to his counsel 52

- Lack of sufficient notice and serious
 illness prevented petitioner's appear-
 ance at trial on April 21, 1986 . . . 18

- Petitioner's counsel, Mr. Philip Foto,
 the attorney of record in this cause,
 had complete professional responsi-
 bility of this case for its entire
 work product and petitioner should
 not be deprived of substantive justice

due to his counsel's neglect or misconduct (Weinberger Sales Co. v. Truett, App. 1941, 2 So.2d 699; and Succession of Robinson, 1937, 186 La. 389) 47, and 49-52 (also refer to court reporter's transcript, separately bound in appendix on pp. 8-11)

- Neglect or misconduct of petitioner's counsel gave rise to a "Negative Pregnant," beneficial to opponent, and deprived petitioner^{or} his valid reconventional demand in the amount of \$22,090.87, as a constitutional property right 37-39
- On 4-28-86, the judgment order and decree of Judge Di Rosa denied counsel Philip Foto's motion to withdraw as petitioner legal representative in the case 53
(See Exhibit R-9, Judgment, in appendix on pp. 4-5).

- By judgment order of 4-28-86,
denying Foto's motion to withdraw,
petitioner was fully relying on
Counsel Foto for his legal repre-
sentation and the protection and
security of his property rights and
claim at the May 13, 1986 trial
due to his inability to make an
appearance due to his serious
illness 54-56

- By Judgment order of 4-28-86,
petitioner was assessed \$750.
sanction plus \$53 cost, without
sufficient notice of trial as a
constitutional due process violation
allegedly causing undue delay in
proceedings (see separate appendix
on p. 5).

- The trial court ruled against the
law by rejecting petitioner's valid
reconventional demand in the amount
of \$22,090.87 that was remediable
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Prayer

Petitioner prays for: (i) a writ of certiorari to the Supreme Court of Louisiana to review an order of that court entered April 4, 1988, denying Reconsideration (Rehearing) and denying petition for writ of mandamus; (ii) For Summary Reversal; (iii) For casting appellee (contractor) Oscar Daste and Sons, Inc. with all costs on appeal and writ of certiorari; and (iv) For any other relief deemed just and fit.

OPINIONS BELOW

1. The unreported opinion of the court of appeal Fourth Circuit, State of Louisiana, dated December 15, 1987, is appended separately in the appendix on pp. 20-32.

2. Commissioner Avis Marie Russell's written reasons, statement of the pleading, findings and conclusion, and recommended judgment, dated August 14, 1986, is appended separately in the appendix on pp. 13-17.

JURISDICTION TO REVIEW

The date of the order of the Supreme Court of Louisiana sought to be reviewed is April 4, 1988, for its denial of reconsideration (rehearing). The jurisdiction of this court is invoked under section 1257(3) of title 28, United States Code to review the judgment or decree in question by writ of certiorari is more fully described and separately presented in appendix on p. 37.

This court has exclusive jurisdiction because it is presumed that the state court based its judgments on the federal questions

and failed to furnish a protection guaranteed by U.S.C.A. Const. Amend. 14, relative to:

(i) depriving petitioner of property without due process of law; and (ii) depriving petitioner of a fair and adequate trial, or his constitutional right to be heard at trial, as his day in court, that is federally guaranteed and federally protected in all courts in any state or territory.

THE FEDERAL QUESTIONS SOUGHT TO BE REVIEWED WERE RAISED IN THE STATE COURTS AS FOLLOWS:

A. In Re: Civil District Court, Parish of Orleans, Div. 'D'.

(i) May 1, 1986, Declaration of Raymond Dobard in support of trial continuance and etc. In the official court reporter's transcript taken at the trial of May 13, 1986, on pp. 11-12 of separate appendix, commissioner Avis Marie Russell avers that she received the documents (Declarations) stamped May 9, but she doesn't understand what all those things mean.

(ii) May 6, 1986, Declaration of Raymond

PETITION FOR CERTIORARI - 31-

Dobard in support of action of nullity and setting aside judgement for fraud and ill practices.

(iii) On December 12, 1986, the federal question was raised during petitioner's appearance at the hearing on the exceptions to the report and recommended judgment of commissioner Avis Marie Russell dated August 14, 1986. The federal questions were ^{raised and} passed upon by the state trial court and construed to be denied by remaining silent on disposition.

B. In Re: C.A. 7591, Court of Appeal Fourth Circuit, State of Louisiana the federal question was raised in appellant's opening brief, dated May 16, 1987, on page 30a under issues, whereas it asserted fairly separable racial discrimination claim by the trial court judge, Louis A. Di Rosa, on January 3, 1983, that arbitrarily, prejudicially and discriminatorily denied petitioner access to his court, either because petitioner was black or disguised as excusable discrimination of petitioner not being a lawyer. However, as whatever it was a conspired impediment to the proceedings

PETITIONER FOR CERTIORARI - 32-

that eventually gave rise and deprived petitioner of a fair trial and further deprived petitioner of the protection of the court in the taking of his private property and property rights as federally protected by U.S.C.A. Amend. 14 for the enforcement of contracts. This conspiracy of Judge Di Rosa was in violation of 42 U.S.C. 1985 (2). The court of appeal Fourth Circuit of Louisiana remained silent on the issue in its opinion of 12-15-87, and thus it must be construed to have rejected same.

C. In Re: No. 88-C-0355, The Supreme Court of the State of Louisiana raised and passed on the federal questions as follows: On page 28 of petitioner's application for a Writ of Certiorari under the heading of Deprivation. Whereas it averred that (i) on January 3, 1983, Judge Louis A. Di Rosa denied Petitioner access to his court as "subtle" racial discrimination for pleading his case in pro se that gave rise to the injury of petitioner and his property; (ii) On May 7, 1986, Judge Di Rosa abused discretion by not granting PETITION FOR CERTIORARI

petitioner's request for a reasonable continuance of the May 13, 1986 trial matter for the opportunity of petitioner to obtain replacement counsel for his neglectful legal counsel, Mr. Philip Foto; (iii) The Supreme Court of Louisiana raised and passed on the issues of the neglect, misconduct, or stepping aside, or fraud of petitioner's legal counsel Mr. Philip Foto, who remained silent in a position of trust, while petitioner's prescription prescribed (pre-trial order of 1-17-86 Exhibit R-7); and whose motion to withdraw as petitioner's legal counsel was denied by Judge Di Rosa's order of 4-28-86 (see Exhibit R-9) and ^{conflictively} allowed to withdraw during the proceedings on May 13, 1986, all of the above neglectful, or misconduct or fraudulent acts deprived petitioner of his federally protected right to a fair trial as guaranteed by U.S.C.A. Amend.

14. The Supreme Court of Louisiana raised and passed on these federal questions of constitutional due process of law relative to a fair and adequate trial and remained silent on the disposition thereof and thus construed to have

rejected same.

All of the above federal questions were timely and properly raised in all of the three state courts and either denied or remained silent on same with no disposition and thus construed to be rejected so as to give this court jurisdiction to review the judgments on Writ of Certiorari.

This court has exclusive jurisdiction of review on writ of certiorari because the state court has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this court. Cite: Chicago, etc., R. Co. v. Swanger, C.C. Mo. 1908, 157 F.783, affirmed 30 S.Ct. 633, 639, 218 U.S. 135, 159, 54 L.Ed. 970, 978; Walkinshaw v. State of Pa., D.C. Pa. 1954, 119 F.Supp. 722.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The constitutional provisions; laws, statutes, and regulations that the case involves are lengthy and their citations are cited below

and their pertinent texts are set forth in
separately bound appendix. Citations: U.S.C.A.
Const. Amend. 5 and 14; 42 USC 1982; 42 USC
1983; and 42 USC 1985(2).

PRELIMINARY
TO STATEMENT OF THE CASE

A.) Petitioner, Raymond Dobard, is aggrieved by the judgment of the Supreme Court of Louisiana on rehearing and is entitled to have this Honorable Court review that judgment.

B.) Petitioner has never had his real day in court and was deprived of constitutional due process for the following reasons:

(i) Neglect, or misconduct, or abandonment of his case during the beginning of the trial by his former counsel, Mr. Philip Foto, of which the effect of said neglect or misconduct caused a breach of fiduciary duty and possible fraud of "stepping aside" to inure a "negative pregnant" as being beneficial to the opponent and deprived Petitioner of his constitutional right to be heard in court and a fair trial as guaranteed under the 14th amendment to the United States Constitution;

(ii) Moreover, it deprived Petitioner's valid Reconventional Demand (\$22,090.87 of remedial damages by default contractor) which is construed to be a substantial and constitutional property right, from being adjudicated by Petitioner's counsel who fraudulently remained silent while prescription prescribed on same;

(iii) Moreover, by the trial court remaining silent on this valid Reconventional Demand, it is construed to have rejected same without just cause. Petitioner draws to the attention of this Honorable Court that the trial court in rejecting Petitioner's Valid Reconventional Demand was a ruling against the principles of law which clearly state that a petition which has a defect remediable by amendment is not to be dismissed; rather amendment is to be allowed. Therefore, jurisdiction should have been retained by the trial court. Simms v. Braren, App. 1971, 252 So. 2d 459; Suarez v. Suarez, 104 Southern Reporter, 616. The

dismissal of the valid Reconventional Demand was a gross abuse of discretion, and before imposing this harsh sanction, the court's precedent requires that possible and meaningful alternatives be reasonably explored, bearing in mind the drastic foreclosure of constitutional property rights that dismissal effects. The record, or the transcript of the trial court of May 13, 1986, shows no evidence that the trial court considered alternatives to dismissal; thus a federally protected constitutional "due process" property right was taken without just cause, or a fair trial, and as a violation of the Fourteenth Amendment to the United States Constitution;

(iv) Honorable Louis A. Di Rosa, on January 3, 1983, arbitrarily, prejudicially and discriminatorily denied Petitioner access to his court, in "pro se", because Petitioner was black and not a lawyer; however, his basis of denial of access is construed to be a constitutional deprivation

that deprived Petitioner of a fair trial because Petitioner was legally prepared to adjudicate his case in "Pro se" and having all of his expert witnesses present in court and ready to testify regarding the defective and poor quality work of default contractor plaintiff Oscar Daste and Sons, Inc.

Petitioner states the denying blacks access to legal process in "Pro se" is an unequal application of justice that is prohibited by the United States Constitution in all states of the United States and thus said denial of access act of Judge Di Rosa deprived petitioner of his Constitutional right to a fair trial that is guaranteed to him by the Fourteenth Amendment to the United States Constitution and the opportunity to represent himself in any court of the United States. United States v. Brown (1975 CA5 La.) 539 F.2d 467; also see 42 USC 1985(2) infra.

(v) Petitioner informs this Honorable Court that the certified record lacks factual information due to Petitioner being

deprived of an opportunity to be able to present evidence into the record because no one legally appeared to legally represent him at the trial on May 13, 1986, and due to petitioner's serious illness was unable to make an appearance, and the abandonment of his case during the beginnig of the trial by his counsel. There was no cross-examination of plaintiff's winesses, nor any challenge to evidence submitted into the record. Petitioner was deprived of obtaining vital and essential discovery necessary for the record by the neglect or misconduct of his abandoned counsel. Therefore, the record was compiled and prepared without the input of Petitioner and lacks factual information that requires corrections, and also contains defects and omissions that precludes a full review for consideration as a more complete and adequate record. The opinion written by the Court of Appeal Fourth Circuit of Louisiana, dated December 15, 1987, was derived from an incomplete factual basis and an

incorrect record which was prejudicially compiled and prepared by evidence submitted by only one party, the plaintiff, Oscar Daste & Sons, Inc. and without any input whatsoever by Petitioner. Thus the record and the written opinion of the Court of Appeal for the Fourth Circuit of Louisiana dated December 15, 1987 is believed to be a misapprehension of factual information and is grossly prejudicial to an extent which causes Petitioner to have a greater burden laid on him than laid on party plaintiff in the same calling and condition and thus contributed to an unjust and illegal discrimination between parties in similar circumstances, material to their rights as a denial of equal justice which is still within the prohibition of the Constitution. This principle of interpretation has been sanctioned by this court in Henderson v. Mayor of New York, 92 U.S. 259.

(vi) Petitioner believes that the proceedings in Honorable Louis A. Di Rosa's court were tainted with unrefuted evidence

and "Subtle" Racial discrimination that compelled Petitioner to meet "extreme conditions" not imposed upon, or applicable to, white litigants appearing before the court as follows:

1. On January 3, 1983, Judge Di Rosa denied Petitioner access to his court in "Pro se" because he was black and not an attorney. This bias and prejudicial course of conduct by Judge Di Rosa caused Petitioner to suffer emotional distress, humiliation, embarrassment, delay and inconvenience with unnecessary additional days of hotel expenses and transportation. After appearing from Berkeley, California fully prepared for trial judge Di Rosa merely continued the matter to January 6, 1983 and ordered Petitioner not to come back without a lawyer. This issue was raised and passed on by the Supreme Court of Louisiana and the Court of Appeal Fourth Circuit of Louisiana. (See page 13 of Appellant's Application for a Writ of Certiorari, to review a judgment of the Court

of Appeal and filed with the Supreme Court of Louisiana in Docket No. 88-C-0355, dated February 5, 1988.

2. On November 21, 1986, Judge Di Rosa "forseeably and prejudicially" continued and rescheduled a (five minute) motion hearing that compelled Petitioner to travel from Berkeley, California to New Orleans, Louisiana and after Petitioner timely appeared before his court Judge Louis A. Di Rosa prejudicially continued this (five minute) motion hearing to December 12, 1986, with no reason given for his prejudicial continuance and this caused Petitioner to again travel to New Orleans on December 12, 1986 at great inconvenience and expense for his preconceived determination and ruling that he could have made on November 21, 1986 for said (five minute) motion hearing to overrule Petitioner's motion to set aside his ad hoc Commssioner's recommended judgment of August 14, 1986. Petitioner believes that this course of conduct by Judge Louis A. Di

Rosa intentionally caused him to meet "extreme conditions" not being imposed on white litigants appearing before Judge Di Rosa's Court and is a denial of Petitioner's civil rights, and a violation of the Fourteenth Amendment to the United States Constitution.

3. Petitioner has deafness and requested of Judge Di Rosa to have the Court provide him with an interpreter (by mail-gram) prior to travelling from Berkeley, California to New Orleans for the scheduled December 12, 1986 (five minute) motion hearing. Judge Di Rosa failed to provide the interpreter and Petitioner was deprived of adequate communication with the court due to his handicap.

4. Petitioner is informed and led to believe that Judge Louis A. Di Rosa sought and engaged Commissioner Avis Marie Russell, a black commissioner and judge ad hoc, to hear the case for him to provide an easy means of justifying a pattern of lawful racial discrimination by allowing another

black person to rule and make his judgment for him on May 13, 1986.

CONCLUSION (PRELIMINARY)

Petitioner draws to this Honorable Court's attention that all the supra acts and discriminatory course of conduct by Judge Louis A. Di Rosa is prohibited by the United States Constitution and a direct violation of the Sixth, Thirteenth and Fourteenth Amendments to the United States Constitution. 42 USC 1985 (2) gives to every citizen involved in litigation the right to be free from a conspiracy for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due process of justice in any State or territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws.

Petitioner urges Summary Reversal as being appropriate in this matter, with respondent-appellee, Oscar Daste and Sons, Inc., being CAST with all costs of appeal and any other relief that this Honorable Court deems just and fit. Moreover, Petitioner's counsel, Mr. Philip Foto, had complete professional responsibility of this case and substantive justice should not be deprived Petitioner for the neglect or misconduct of his counsel which was not of petitioner's fault.

End Preliminary

STATEMENT OF THE CASE

1. Petitioner, Raymond Dobard, is a handicapped black senior citizen with "deafness" and other life-threatening serious illness and appearing in this cause of action in "Pro se" as the defendant and also the plaintiff in reconvention and the petitioner for a Writ of Certiorari.

2.(a) Petitioner is the owner of his family home located at 1427 and 1429 Touro Street in New Orleans, Louisiana, which is the subject property of this litigation. This cause of action involves a dispute between petitioner and default plaintiff contractor relative to unauthorized remedial work performed by plaintiff contractor and the remedial contract to correct the defects deviations and poor quality work of plaintiff therein.

(b) Petitioner is a non-resident of New Orleans with domicile in Berkeley, California.

3. Petitioner believes that this cause of action involves fraud imposed on petitioner by his previous legal counsel that is extrinsic or collateral to the matters involved in the action that prevented petitioner from having a fair trial and due process of law. This belief of fraud, or misconduct, or stepping aside by counsel, or neglect, created unusual and exceptional circumstances, thereby causing petitioner to be deprived of his constitutional rights to a fair trial and due process of law and further contributed to an unequal application of justice.

4. Petitioner's previous counsel, Mr. Philip Foto, by misconduct and neglect abandoned petitioner's case during the beginning of the trial on May 13, 1986, and before, without just cause, which said unwarranted act was acquiesced by the trial court's commissioner, Russell, acting for Judge Di Rosa, as a constitutional deprivation and in further conflict with the court's order and decree of April 28, 1986 (that was

at no time ever set aside) as a conflicting irregularity of the court and a gross abuse of discretion. The judgment order and decree of Judge Louis A. Di Rosa, the trial court judge of the Civil District Court, Parish of Orleans, Division "D," by its order and decree signed on April 28, 1986, denied the motion of Counsel Philip Foto to withdraw as the legal representative and recognized counsel of record for Petitioner Raymond Dobard. Petitioner was fully and wholly relying on Counsel Philip Foto's legal representation at the trial on May 13, 1986, based on the court's order and decree rendered on April 28, 1986. (See Exhibit R-9 in SEPARATE appendix on pp. 3-5.) The trial court "prejudicially" and foreseeably" prevented petitioner's claim from legally proceeding by its unconstitutional act of conflicting, unwarranted and arbitrary allowing petitioner's counsel to withdraw and abandon his case and claim. This unconstitutional, conflicting and arbitrary act on the part of

ad hoc Commissioner Avis Marie Russell, for Honorable Louis A. Di Rosa, deprived petitioner from having access to the court, deprived petitioner of equal protection and security of the court regarding contracts, and unwarrantedly gave rise to the SPOILATION of petitioner's property, and wrongfully and prejudicially caused petitioner to have a greater burden laid on him than laid on party plaintiff in the same calling and condition and thus contributed to an unjust and illegal discrimination between parties in similar circumstances, material to their rights as a denial of equal justice which is still within the prohibition of the Constitution. This principle of interpretation has been sanctioned by this court in Henderson v. Mayor of New York, 92 U.S. 259, as a companion case.

5. By no one appearing at the trial to legally represent petitioner on May 13, 1986, this prevented petitioner from having the opportunity to present his just claim or

defense in court and further deprived petitioner of his constitutional right to a day in court. Counsel Philip Foto failed to return to petitioner the unused portion of his fee that he was paid in advance to litigate the full and complete trial as petitioner's legal representative.

6. Due to petitioner's serious illness and his rapid and progressive deafness, he was unable to have total communication, or to make an appearance in New Orleans from California during the periods of April or May of 1986. Petitioner conveyed this illness information to his counsel, Philip Foto, and suggested that he obtain a continuance of trial to a time when petitioner would be able to make an appearance at trial in good health or make other legal arrangements. Counsel Foto neglectively failed to make such legal arrangement but by neglect and misconduct unilaterally decided to abandon petitioner's case.

7. The abandoning of petitioner's case

at the beginning of the trial by his counsel contributed to defects and omissions in the certified record, prepared by the clerk of the trial court without any input from petitioner. Since no one appeared to legally represent petitioner at the trial of May 13, 1986, there was no cross-examination of plaintiff's witnesses, nor any challenge, or refutation to whatever testimony that went into evidence, and thus created a one-sided and incomplete certified record on appeal. Therefore, the certified record contains defects, omissions and a lack of factual information.

8. The judgment order and decree, Exhibit R-9, supra, denied Counsel Philip Foto's motion to withdraw as petitioner's legal representative and recognized Phil Foto as the legal counsel of petitioner Raymond Dobard. Moreover, the order went on to be very explicit and stated that Phil Foto will not be allowed to withdraw as petitioner's legal representative under any

circumstances, unless discharged by written affidavit of petitioner. Petitioner Dobard objected to his counsel's withdrawal and was fully and wholly relying on him for his legal representation at the trial on May 13, 1986 for the protection and security of his property and to enforce his valid Reconventional demand for \$22,090.87 of damages sustained by petitioner due to remedial contract to correct defects, deviations and poor quality work of default plaintiff contractor. The court order and decree denying counsel Foto's motion to withdraw was in full force and effect at the beginning of the trial on May 13, 1986; therefore the determination made by ad hoc Commissioner Avis Marie Russell, for Judge Di Rosa, of allowing Counsel Foto to withdraw as petitioner's legal representative, and over his objection, was construed to be arbitrary and a gross abuse of discretion and in direct conflict with the judgment order of April 28, 1986 (Exhibit R-9) and an irregularity of the court that gave rise to

unusual and extraordinary circumstances that eventually deprived petitioner of his constitutional rights to a fair trial and due process of law. These issues regarding Counsel Foto's questionable withdrawal and abandoning petitioner's case and other misconduct, fraud, neglect, and allowing Prescription to prescribe, were raised at the Court of Appeal, Fourth Circuit of Louisiana (see affirmed "opinion" of No. CA-7591, Court of Appeal, Fourth Circuit, State of Louisiana, dated 12-15-87, on pages ²⁶⁻²⁸ ~~26-28~~ ^{APPENDIX}) and the Supreme Court of the State of Louisiana, along with petitioner's valid reconventional demand that was construed to be rejected without just cause, by the trial court remaining silent on the disposition of the issue. The trial court should have retained jurisdiction on the valid reconventional demand for \$22,090.87 because the court's ruling on the issue was against the principles of law which clearly state that a petition which has a defect remediable by amendment is not to be dismissed; rather amendment is to be

allowed. Simms v. Braren, App. 1971, 252 So. 2d 459; Suarez v. Suarez, 104 Southern Reporter, 616.

ISSUES RAISED AND
PASSED ON BY STATE COURTS

9. All of the above and foregoing issues regarding Federal Question of Due Process violations of the 14th Amendment to the United States Constitution relative to depriving petitioner of a fair trial, access to the court or his real day in court were raised and passed on by both the Court of Appeal Fourth Circuit of Louisiana and the Supreme Court of Louisiana. The state courts dealt with all the federal questions regarding the claim asserted by petitioner as more fully described in this Petition of Raymond Dobard as a statement of fact.

RACIAL OR CLASS DISCRIMINATION
IMPOSED ON PETITIONER BY
JUDGE LOUIS A. DI ROSA

10. The Supreme Court of Louisiana raised and passed on this racial or class discrimination federal question as described on page 28 of petitioner's

application for a Writ of Certiorari, to review a judgment of the Court of Appeal, Fourth Circuit, and under the heading of Deprivation. This discrimination issue was also raised and passed on by the Court of Appeal, Fourth Circuit of Louisiana in appellant's opening brief, page 30a under issues. In that asserted fairly separable racial discrimination claim, the trial court judge, Louis A. Di Rosa, on January 3, 1983, arbitrarily, prejudicially and discriminatorily denied petitioner access to his court, either because petitioner was black or not a lawyer; however and whatever his basis of denial of access to his court it was construed to be a constitutional deprivation that deprived petitioner of a fair trial and further gave rise to eventual extreme hardship in this cause of action and as one of unusual and extraordinary circumstances that denied petitioner access to the court for the protection of his property, the prevention and redress of wrongs, and the enforcement

of contracts because of his race. The denial of access to Judge Di Rosa's court on January 3, 1983 to petitioner by he not being an attorney, is construed to be "excusable discrimination" and illegal. Either is a violation of petitioner's civil rights that are federally protected by the United States Constitution. (42 USC 1981; 42 USC 1985(2)(i) and Article I, Section 13 of the Constitution of Louisiana. Judge Louis A. Di Rosa gave no basis for his classification of a difference bearing a reasonable and just relation to his act in respect to which the classification was attempted. Class legislation of the character of Judge Di Rosa's act in issue enacted by the States which discriminates in favor of one person or set of persons and against another or others is forbidden by the Fourteenth Amendment. Gulf C. & S.F.R. Co. v. Ellis, 165 U.S. 150.

Judge Di Rosa allowed petitioner access to his court to assess full judgment and all cost upon him as reflected in Judgment dated

December 16, 1986, however denied petitioner access to his court on January 3, 1983 for pleading his fully prepared case, and with all of his witnesses present in the court and ready to testify. Both State courts remained silent on this January 3, 1983 denial of access issue to Judge Di Rosa's court and thus is construed to have rejected same. This issue was raised and passed on as follows: CA-7591, Court of Appeal Fourth Circuit of Louisiana. See appellant's opening brief, page 30a, paragraph 13; and Docket No. 88-C-0355, Supreme Court of Louisiana, Application for Writ of Certiorari dated February 18, 1988; Statement of the Case, page 13, paragraphs 22, 23 and 24.

CONCLUSION

In the interest of justice petitioner seeks plenary consideration and relief in the form of Summary Reversal and to further CAST plaintiff contractor with all costs on appeal and any other relief that this court deems just and fair.

-59-

I declare under penalty of perjury that
the foregoing is true and correct. Executed
at Berkeley, California on the 11th day of
JUNE 24, 1988.

Respectfully Submitted,

Raymond Dobard

RAYMOND DOBARD
Petitioner in Pro se
1866 Alcatraz Avenue
Berkeley, CA 94703

415/ 658-5344

REASONS FOR GRANTING THE WRIT

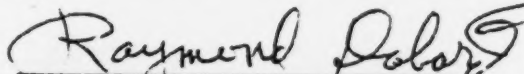
(a) In the interest of substantial justice, this Court should grant petitioner's writ of certiorari for correcting the state courts to the extent that they incorrectly adjudged a federal rights. Zacchini v. Scripps-Howard Broadcasting Co., Ohio 1977, 975 S.Ct. 2849, 433 U.S. 562, 53 L.Ed. 2d 965.

(b) Reasons for further granting the writ is because petitioner has never had his real day in court because, petitioner, a layman, relied on his attorney, Mr. Philip Foto, to legally represent him in this cause of action and by neglect, misconduct or fraud, he failed to do so and breached a fiduciary duty to petitioner, thereby depriving petitioner of a fair trial, his day in court, his right to be heard and the violation of constitutional due process of law that gave rise to the deprivation and spoliation of petitioner's

private property and his property rights that are fully guaranteed by the 14th amendment to the United States Constitution. The trial court being fully aware of this "forseeable" constitutional deprivation fully acquiesced same by condoning and allowing petitioner's counsel to abandon his case and defense thus stripping him of legal representation and his constitutional right to a fair trial. Petitioner was fully relying on attorney Philip Foto for legal representation at the trial on May 13, 1986, and prior thereto, and for the professional legal responsibility of the entire work product of the litigation as the attorney of record for which he was paid in advance and contracted to the end of the trial.

Based on the above and foregoing, relief should be granted petitioner in the form of the issuance of the Writ in order that petitioner may finally have his real day in court and on the merits of his claim.

Dated: June 24, 1988


Raymond Dobard, Petitioner
in pro se
1866 Alcatraz Avenue
Berkeley, Calif. 94703
415/ 658-5344

87-2121

No. A-808

IN THE SUPREME COURT OF THE UNITED
STATES

Supreme Court, U.S.
FILED
JUN 27 1988
JOSEPH E. SPANIOLO
CLERK

October Term, 1987

RAYMOND DOBARD

Petitioner

v.

OSCAR DASTE & SONS, INC.

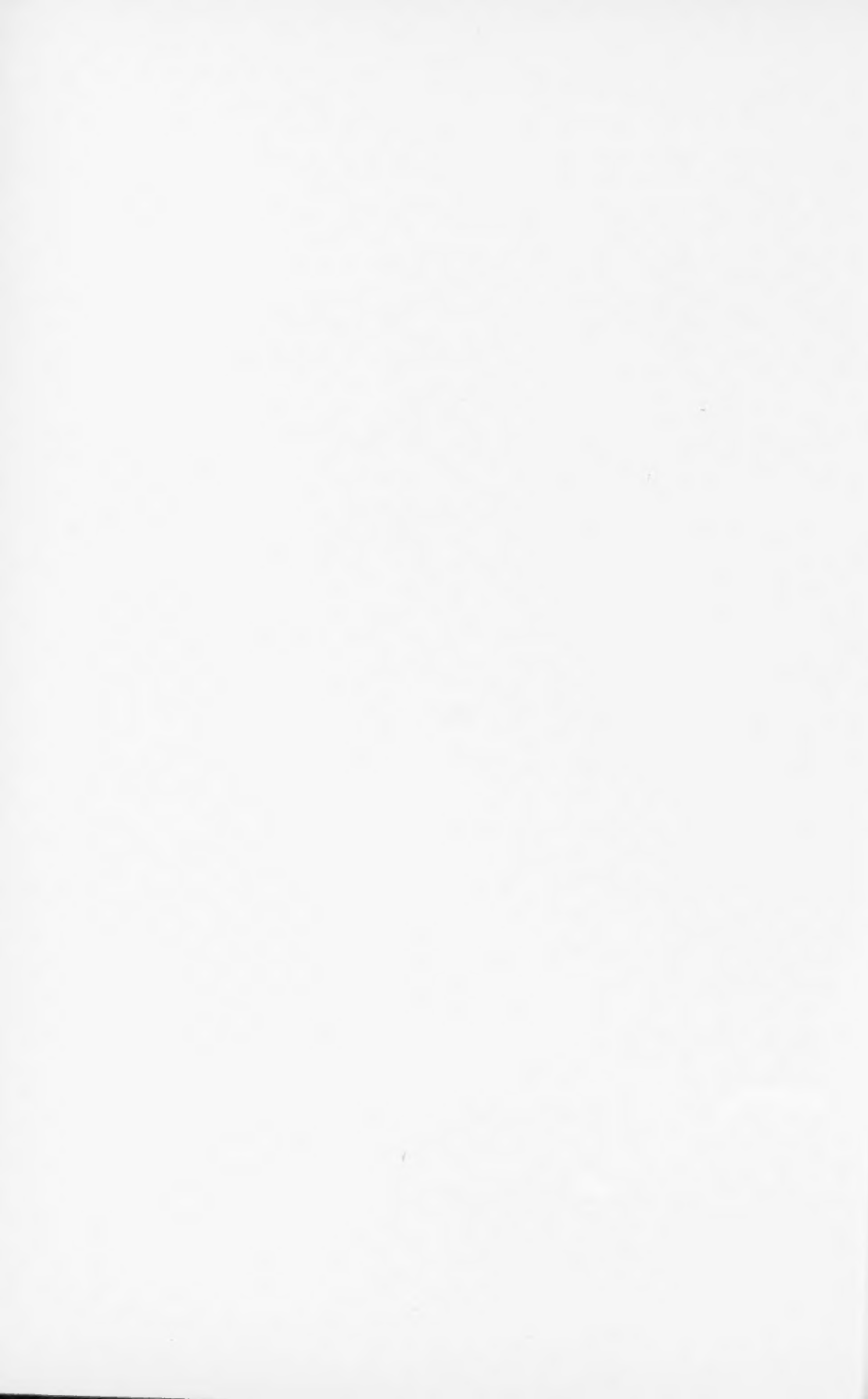
Appellee

APPENDIX.... Relative To Petition For a Writ
of Certiorari to the Supreme
Court of Louisiana and for
Summary Reversal

Raymond Dobard
Petitioner in pro se
1866 Alcatraz Avenue
Berkeley, CA 94703
415/ 658-5344

June 24, 1988

400



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EXHIBIT R-7

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 82-2723

DIVISION "D"

DOCKET 4

OSCAR DASTE & SONS, INC.

VS.

RAYMOND DOBARD

PRE-TRIAL ORDER

A pre-liminary conference was held in this matter on the 17th day of January, 1986.

This matter is set for trial on the 21st day of April, 1986 at 10:30 o'clock a.m. It will take one day to try.

All amendments to pleadings and the adding of parties shall be completed 30 days from the date of the preliminary conference. Any party adding a party shall provide counsel for said party or parties with a copy of this order.

All motions and exceptions shall be filed 45 days prior to trial.

Discovery shall be completed 30 days prior to trial. This includes exchange of

documents, exhibits and expert reports.

List of witnesses shall be filed 20 days prior to trial.

Counsel shall submit a pre-trial memo 10 days prior to trial which shall include a list of witnesses, documents and exhibits to be introduced and a memorandum of fact and law.

Continuances will be considered only if agreed to by all parties or after a contradictory hearing.

Additional orders:

/S/ Avis Marie Russell
Commissioner and Judge Ad Hoc

EXHIBIT R-9

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 82-2723

DIVISION "D"

DOCKET 4

OSCAR DASTE & SONS, INC.

VS.

RAYMOND DOBARD

JUDGEMENT

The Court considered on this 21 day of April, 1986, several preliminary matters in this proceeding, the matter having been set for trial on the merits before the Honorable Judge Avis Russell, Commissioner, and Judge AD HOC for the Civil District of the Parish of Orleans.

The following were present:

1. Marc H. Morial, Esq., representing Oscar Daste.
2. Oscar Daste, plaintiff and owner of Oscar Daste and Sons, Inc.
3. Phil Foto, Esq., representing Raymond Dobard, defendant, who was absent.

After hearing argument of both counsel,

and upon consideration of the motion to continue urged by defendant Raymond Dobard through his counsel Phil Foto, the court issued the following judgement:

It is Ordered, Adjudged and Decreed that

A) The trial of this matter is reset for May 13, 1986, at 10:30 a.m. before Commissioner Russell.

B) The court will grant no further continuances and no further discovery will be allowed by either party.

C) Both parties shall file with the court a list of all witnesses at least 20 days prior to trial and shall also file a pre-trial memorandum of law no later than 10 days prior to trial.

D) Phil Foto is recognized as counsel of record for Mr. Raymond Dobard, and will not be allowed to withdraw as counsel; Therefore Foto's motion to withdraw is hereby denied and he shall not be allowed to withdraw under any circumstances except upon presentation to the court of a motion and order together with a notarized affidavit of Mr. Dobard indicating

that Dobard no longer wishes Foto to represent him and indicating his new counsel or his desire to represent himself. Such affidavit must be submitted to the court no later than ____ days prior to trial, or no later than the 5th day of May, 1986.

E) Defendant Raymond Dobard is hereby assessed costs as follows: Fifty-three dollars and no/100 cents (\$53.00) for expenses incurred by Daste for subpeonas.

F) Defendant Dobard is also assessed sanctions in the amount of seven hundred and fifty dollars and no/100 cents (\$750.00) for causing undue delay in these proceedings.

Signed this 28th day of April, 1986 at
New Orleans, Louisiana.

s/ Louis Di Rosa
Judge
(sgd.) Avis Marie Russell

CIVIL DISTRICT COURT

PARISH OF ORLEANS

STATE OF LOUISIANA

OSCAR DASTE & SONS, INC. NO. 82-2723

VERSUS

DIVISION "D"

RAYMOND DOBARD

Testimony and notes of evidence taken in the above-entitled cause before the HONORABLE COMMISSIONER AVIS MARIE RUSSELL, Judge Ad Hoc presiding, on Tuesday, the 13th day of May, 1986.

APPEARANCES:

MARC MORIAL, ESQ.

Representing the Plaintiff

PHILIP FOTO, ESQ.

REPORTED BY:

NANCY BEATY TATARSKI

OFFICIAL COURT REPORTER

TRANSCRIPT

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* * *

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PROCEEDINGS

THE COURT:

Counsels, would you make your appearances for the record, please?

MR. MORIAL:

Your Honor, for the record, Marc Morial for Oscar Daste and Sons, Inc. and Oscar Daste.

MR. FOTO:

May it please the Court, Philip Foto, allegedly for the defendant, Raymond Dobard. Again, Your Honor --

THE COURT:

Wait, wait. I just asked you -- all I asked you to do was identify --

MR. FOTO:

Am I the attorney or not?

THE COURT:

You are the attorney because you didn't file a motion to withdraw.

MR. FOTO:

I have the file, but you told me not to file it unless he filed an affidavit notarized that intended me to and he did

not do that.

THE COURT:

Okay. Mr. Dobard filed some other papers. Since we last got together -- I don't even remember what the date was.

MR. FOTO:

It was April 21 or something like that.

THE COURT:

April 21?

MR. FOTO:

I think it was something like that.

THE COURT:

That's about right.

-- he sent another telegram and he sent these papers that were stamped "May 9" and in them, it's clear to the Court that he was aware of the trial date. He also filed these motions -- I don't even know if counsel for plaintiff received copy of them, and signed them. In addition, he called me on yesterday. I -- when I spoke to him, I said to him that he should be on an airplane to New Orleans

because he had a trial date set today and he said he filed some papers and he wanted me to act on them. I said, "Well," I said, "are you represented by counsel?" He said, "Yes." I said, "Then why are you filing papers?" He said, "Because I want you to hear them." I told him that he could not have both ways. If he was his own attorney, then that was fine. I told him that I was aware of the fact that Mr. Foto wanted to withdraw from the case. So to make a long story short, I made it clear to him that I was not continuing the trial, that he should be present, that he should be present both as a defendant in this matter and since he was representing himself, as counsel for himself. It is 10:57; he's not here. I did not get the impression that he was going to be here. With regard to the motions he filed, I told him that I could not rule on any of them without a hearing. The motions were -- it says, "Ex parte motion, setting aside judgment,

suspension of prescription, trial continuance, nonsuit as alternative." I don't understand what all of those things mean, but he's filed these papers and I told him that if he wanted to argue any of them, that he should be here and he's not. So, therefore, I'm going to allow Mr. Foto to be dismissed as counsel for Mr. Dobard and I'm going to proceed with taking evidence in this matter.

MR. FOTO:

Thank you, Your Honor. In that connection, I submit herewith a motion to withdraw.

THE COURT:

Is that the same one or is that a new one?

MR. FOTO:

No, ma'am, this is as a result of some of the things that I understand have transpired, although I have not gotten all the documents that you have referred to, which does state, however, well, basically, it sets forth the facts that Your Honor

TRANSCRIPT

has just stated, that he has represented himself.

THE COURT:

Okay. I'll sign this. It has to be stamped with "Recommended" on it and then I'll send it to Judge DiRosa.

MR. FOTO:

Thank you.

THE COURT:

Okay.

(Whereupon Mr. Foto leaves the courtroom.)

THE COURT:

You ready to proceed, Mr. Morial?

MR. MORIAL:

Yes. Yes, Your Honor. We are prepared to proceed.

Your Honor, I'd like a brief opening statement.

Your Honor, our first witness is Oscar Daste.

(Whereupon all witnesses were sequestered throughout the trial.)

OSCAR G. DASTE, JR.,

2849 Allen, New Orleans, Louisiana; having

TRANSCRIPT

EXHIBIT BB-7(b)

Filed Sept 4, 1986
Civil District Court

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 82-2723

DIVISION "D"

DOCKET 4

OSCAR DASTE & SONS, INC.

VS.

RAYMOND DOBARD

COMMISSIONER'S WRITTEN REASONS

STATEMENT OF THE PLEADINGS

Plaintiff, Oscar Daste and Sons, Inc.,
instituted this action against defendant,
Raymond Dobard to recover the balance due on
an oral contract for repair and renovation of
immovable property.

Defendant, Raymond Dobard, appearing in
proper person, filed an answer and
reconventional demand. Defendant denied the
allegations of plaintiff's petition and
averred that he paid plaintiff in full.
Raymond Dobard, as plaintiff in reconvention,
seeks amounts incurred to correct work
performed by plaintiff and defendant in

reconvention.

It does not appear from the record in this proceeding that service of the reconventional demand was requested or made. There is no answer to the reconventional demand or request for a preliminary default. Therefore, only the main demand is before this court.

FINDINGS AND CONCLUSIONS

In late September or early October 1981, Lloyd E. Gavion, Sr. contacted plaintiff, Oscar Daste, on behalf of his first cousin Raymond Dobard who needed work done on a house located on Touro Street in New Orleans.

Mr. Daste, a licensed masonry contractor, entered into an oral agreement with Raymond Dobard to do work at 1427-29 Touro Street in New Orleans. Mr. Dobard was and is a resident of California and he and Mr. Daste communicated in writing and by telephone.

Originally, plaintiff was to brick the front of the house for materials and time. As the work was being performed, Mr. Daste

determined that it was necessary to shore up the house.

By letter, dated October 28, 1981, Mr. Dobard forwarded a \$2,000.00 check for the work being performed by plaintiff. In that letter, Mr. Dobard, experienced himself in the carpentry business, gave instruction on other work to be performed by defendant.

Again by letter, dated November 10, 1981, Mr. Dobard forwarded a payment of \$1266.33 indicating that this was payment in full for the work done by defendant.

Mr. Daste testified that the work performed at 1427-29 Touro was done in 3 phases. Phase 1 consisted of bricking the front of the house at a cost of approximately \$1200.00; Phase 2 was the leveling of the house and the concrete piers at approximately \$2,000.00. Mr. Daste admits that Mr. Dobard paid for Phases 1 and 2 but has failed to pay for the third phase which consisted of adding concrete footing, laying concrete block piers, removing *THE FLOORING* in two bedrooms, two kitchens, two porches and two bathrooms in

addition to other repairs and renovation billed at \$3,240.00 for work done as of November 23, 1981. Mr. Daste testified that he and his men completed the work the end of November. The final bill sent on November 30, 1986 was in the amount of \$5,399.02 which included \$3,480.00 for labor, \$983.51 in taxes and insurance and \$935.51 for materials.

Several of the workers on this job corroborated Mr. Daste's testimony regarding the work done at 1427-29 Touro Street and the period of time worked.

Mr. Dobard had due notice of the trial date and in fact knew of the trial date. Yet, he failed to appear at the trial of this matter and no one appeared to testify on his behalf.

The evidence presented supports a judgment in favor of plaintiff.

RECOMMENDED JUDGMENT

It is recommended that judgment be rendered in favor of plaintiff, Oscar Daste & Sons, Inc., and against defendant Raymond Dobard, in the amount of \$5,399.02 with legal

interest thereon from date of judicial demand
until paid and for all costs of these
proceedings.

August 14, 1986

/S/ Avis Marie Russell
Commissioner and Judge Ad Hoc

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 82-2723

DIVISION "D"

DOCKET 4

OSCAR DASTE & SONS, INC.

VS.

RAYMOND DOBARD

JUDGMENT ON EXCEPTIONS TO COMMISSIONER'S REPORT

The exceptions to the report of the
commissioner came on this day for trial.

PRESENT: Marc Morial, Attorney for plain-
tiffs, Oscar Daste and Sons, Inc.
Raymond Dobard defendant appearing
in proper person

When after hearing the pleadings and
argument of all parties

IT IS ORDERED, ADJUDGED AND DECREED That
the exceptions to the report of the commis-
sioner, filed herein on behalf of defendant,
Raymond Dobard, be and the same is overruled.
JUDGMENT READ, RENDERED AND SIGNED IN OPEN
COURT THIS 12TH DAY OF DECEMBER, 198⁶.

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/s/
Louis A. Di Rosa
JUDGE

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 82-2723

DIVISION "D"

DOCKET 4

OSCAR DASTE & SONS, INC.

VS.

RAYMOND DOBARD

JUDGMENT

Considering the recommendation of the commissioner made part of the record herein.

The court is of the opinion that the law and evidence is in favor of the plaintiff, therefore:

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of plaintiff, Oscar Daste and Sons, Inc. and against defendant, Raymond Dobard, in the full sum of \$5,399.02 together with legal interest thereon from date of judicial demand until paid, and for all costs of these proceedings. JUDGMENT, READ, RENDERED AND SIGNED IN OPEN COURT THIS 16TH DAY OF DECEMBER, 1986.

-19-

/s/
Louis A. Di Rosa
JUDGE

OSCAR DASTE AND SONS, INC. NO. CA-7591

VERSUS

COURT OF APPEAL

RAYMOND DOBARD

FOURTH CIRCUIT

STATE OF LOUISIANA

* * *

ON APPEAL FROM CIVIL DISTRICT COURT

FOR THE PARISH OF ORLEANS

NO. 82-2723, DIVISION "D"

HONORABLE LOUIS A. DIROSA, JUDGE

* * *

ROBERT L. LOBRANO

JUDGE

(Court composed of Judges Denis A. Barry,
Robert L. Lobrano and Charles R. Ward)

DEC. 15 1987

MARC H. MORIAL

New Orleans, La. 70113

FOR PLAINTIFF-APPELLEE

RAYMOND DOBARD

Berkeley, California 94703

IN PROPER PERSON, DEFENDANT-APPELLANT

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AFFIRMED.

Raymond Dobard, defendant, appeals a judgment in favor of Oscar Daste and Sons, Inc. in the amount of \$5,399.02, plus interest and costs for non payment of a construction contract.

FACTS:

Mr. Dobard is the non-resident owner of immovable property located at 1427-1429 Touro Street in New Orleans. Daste is a masonry contractor working in New Orleans. Because of the property's deplorable condition, Dobard elected to rePAir the building and requested assistance in finding a contractor from his cousin, Lloyd GaVion. Mr. GaVion approached Daste and asked him to repair and remodel the premises. Daste contacted Dobard at his residence in Berkeley, California, and they entered into a series of verbal and written communications concerning the Touro Street property. The initial work required Daste to erect a brick veneer on the front of

the building. The estimate for this work was \$2,700.00.

Daste obtained the necessary permits from The City and began his work in October, 1981. Daste remained in daily contact with Dobard through letters and various telephone calls. As various problems were encountered, Daste would check with Dobard and inform him of the situation and obtain his permission before proceeding with corrective work.

On October 28, 1981, Dobard sent a \$2,000.00 check to Daste as partial payment. However, to complete the requested work, it was necessary for Daste to do some foundation work, including leveling the house. On November 5, 1981, Daste sent a statement to Dobard showing a total of \$3,266.33 for the work done to date, and requested a check for the balance of \$1,266.33.

This check was sent on November 10, 1981. Dobard then traveled to New Orleans around November 16, 1981 and visited the property. According to the testimony of

Daste, Dobard requested additional work on the house. Daste started this additional work which consisted of putting flooring down in the kitchen, patching the floor, and putting in two bathrooms.

On December 1, 1981, Daste received a letter from Dobard requesting him to stop work on the house due to lack of financing, and to mail a statement for materials and labor. Daste stopped work, boarded up the house and sent Dobard a bill for \$5,399.02. Daste made several requests for the amount owed but was unsuccessful. On February 11, 1982, Daste filed this suit requesting payment.

PROCEEDINGS BELOW

When the suit was initially filed, a curator ad hoc was appointed to represent Dobard, and a writ of attachment was issued against the property. Subsequently, Dobard retained his own counsel. However, throughout the course of this litigation and, even though Dobard was represented by counsel,

Dobard has elected to represent himself. Dobard's attempts to represent himself have created a confused record which we shall attempt to put in perspective.

Dobard files this appeal pro se and submits a lengthy and confused brief in support of his assertions. We group the issues as follows:

- 1) Appellant was denied due process because of improper and/or insufficient notice of trial, and negligence of counsel.
- 2) Appellant's reconventional demand as improperly dismissed.
- 3) The record is in error and appellant should be allowed his version of the operative facts.
- 4) The trial court erred in rendering judgment against appellant.

NOTICE OF TRIAL

A review of the record shows that although this matter was filed February 26, 1982, trial was not held until May 13, 1986. Judgment was rendered December 12, 1986.

Dobard complains he was not properly notified of the May 13th trial date. The

record shows this matter was set for trial numerous times and was continued on all but one occasion by Dobard. The record contains pleadings by "mailgram" from Dobard requesting continuances and other pre-trial discovery.

On the April 21, 1986 trial date, even though all parties were properly notified, Dobard by mailgram advised the court that he didn't learn of that date until April 17, 1986 and requested that it be continued. The Court reset the matter for May 13, 1986. Mr. Foto as counsel for Dobard was present and notified.

The record shows that Dobard was once again advised of this trial date by letter from Mr. Foto. This notice was received by him on April 29, 1986. Documents filed by Dobard on May 6th indicate he was aware of the May 13th date. Furthermore, Dobard contacted the commissioner hearing this matter the day before the trial, to discuss additional motions he had filed. She advised him

again of the trial set the next day and that he should be present.

Dobard argues that La. R.S. 13:1171(D) requires notice of trial to be served by the civil sheriff. That statute was amended in 1984 and eliminates the necessity of that type of notification. It therefore has no effect on the May 1986 trial.

The record shows that Dobard's counsel of record was properly notified of the trial, and thus Dobard was also properly notified. His attorney sent this notice to him by registered mail.

We find no due process violation given the facts and history of this case. After numerous continuances, it was well within the discretion of the trial court to proceed with the matter.

NEGLIGENCE OF COUNSEL

Dobard claims he was denied a fair trial because of lack of representation and/or ineffective counsel.

Throughout this litigation Dobard has

attempted to represent himself, and be represented by counsel. On April 21, 1986 Mr. Foto attempted to withdraw as Dobard's attorney. The Court refused unless Foto could produce Dobard's written permission to do so. At that time, the Court also set the May 13th trial date. As previously stated Dobard was advised of that trial date. On the morning of the trial, Foto was allowed to withdraw as counsel for Dobard. The commissioner stated that her telephone conversation with Dobard the previous day convinced her he no longer desired Foto's representation. The matter went to trial as scheduled, and Daste presented his evidence on the merits.

We find that there is no denial of a fair trial. Dobard was well aware of the trial date and the necessity for his presence. His insistence, over the recommendations of Mr. Foto and the commissioner, that he represent himself suggests dilatory tactics that cannot be used as a claim for due process violations.

RECONVENTIONAL DEMAND

Dobard filed a reconventional demand against Daste. That demand was never properly served on Daste. Article 1063 of the Code of Civil Procedure provides:

"The petition in reconvention, whether incorporated in the answer to the principal action or filed separately, shall be served on the plaintiff in the principal action in the manner prescribed by Article 1314."

Article 1314 provides:

"A pleading which is required to be served, but which may not be mailed or delivered under Article 1313, shall be served by the sheriff, either on the adverse party in any manner permitted under Articles 1231 through 1265, or personally on the counsel of record of the adverse party."

The record shows that the reconventional demand was never properly served on Daste. Dobard's reliance on Article 1313 is misplaced since that article is not applicable. Furthermore Dobard is mistaken in his belief that the reconventional demand was dismissed. It was not dismissed, the Court did not consider it because issue had not been joined.

NARRATIVE OF FACTS

Dobard attempts to supplement the record with a narrative of facts. This is improper.

A narrative of facts is used only when there is no testimony recorded in the trial court, and is prepared by the trial judge or agreed to by the parties. La. C.C.P. Articles 2131; 2132. The transcript of the proceedings held on April 21, 1986; May 13, 1986; and December 12, 1986 are in the record. We find no legal support to allow appellant's narrative of facts.

JUDGMENT OF THE TRIAL COURT

This matter was heard before a commissioner on May 13, 1986. The commissioner filed her report with the district court on August 11, 1986 and recommended judgment in Daste's favor in the amount of \$5,399.02, plus interest and costs. The trial court, over the exceptions filed by Dobard, accepted the commissioner's recommendation, and granted judgment accordingly.

The evidence supports the following

factual conclusions. Daste and Dobard contracted to renovate Dobard's property on Touro Street. The contract initially provided for the construction of a brick veneer on the front of the house. At various times, Dobard requested or approved additional work. The cost of the initial work was \$2,700.00, of which Dobard paid \$2,000.00. Additional work, as shown on Daste's November 5, 1981 statement, showed the total cost at \$3,266.33, leaving a balance of \$1,266.33. Dobard paid this amount on November 10, 1981.

Daste testified that additional work was requested by Dobard on his visit to New Orleans around November 16, 1981. Daste was notified to cease work on December 1, 1981. The testimony and evidence in the record substantiates the labor, materials, taxes and loss profit owed as a result of the additional work.

Civil Code Article 2765 forms the basis for a contractor's claim in quantum meruit.

That article provides:

"The proprietor has a right to cancel at pleasure the bargain he has made, even in case the work has already been commenced, by paying the undertaker for the expense and labor already incurred, and such damages as the nature of the case may require."

Once advised to stop work, Daste's claim for work already incurred arose. In an action for quantum meruit the contractor is entitled to recover as much as he reasonably deserves for his services, and the time and labor required. Southern Mosaic Tile, Inc. v. Alessi, 411 So.2d 601 (La. App. 1st Cir. 1982).

Dobard's argument that the contract is void because it was not recorded has no merit. Dobard argues the requirements of La. R.S. 9:2756 require recordation. That statute has no application to the issues before us. It pertains to the necessity of recordation in conjunction with the lien and privileges granted by the Private Works Statute. Lack of recordation has no effect on the validity of a contract as between parties to that

contract.

We find no error in the trial court's
judgment.

AFFIRMED.

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EXHIBIT AA (1)

Office of The Clerk
Court of Appeal, Fourth Circuit
State of Louisiana

January 15, 1988

Mr. Raymond Dobard
1866 Alcatraz Avenue
Berkeley, CA 94703

Re: No. CA-7591,
Oscar Daste and Sons, Inc. vs. Dobard.

Dear Mr. Dobard:

Yesterday I received the enclosed documents
from you. The Rehearing in the above
captioned matter was denied yesterday, hence,
I am returning these documents to you.

Sincerely,

/s/
Danielle Schott
CLERK OF COURT

Clerk's Office, New Orleans, Jan. 14, 1988.

Rehearing was this day refused in the
case entitled OSCAR DASTE AND SONS, INC. vs.
RAYMOND DOBARD,
No. CA-7591.

Very truly yours,

- 33 - /s/
Danielle A. Schott
CLERK OF COURT

THE SUPREME COURT OF THE STATE OF LOUISIANA

OSCAR DASTE AND SONS, INC.

VS.

NO. 88-C - 0355

RAYMOND DOBARD

IN RE: Dobard, Raymond; Applying for Writ of
Certiorari and/or Review; to the Court of
Appeal, Fourth Circuit, Number CA-7591;
Parish of Orleans Civil District Court Div.
"D" Number 82-2723.

March 11, 1988

Motion and writ denied.

JLD

JAD

WFM

JCW

HTL

LFC

Supreme Court of Louisiana

March 11, 1988

/s/ FRANS J. LABRANCHE, JR.

Clerk of Court

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For the Court

THE SUPREME COURT OF THE STATE OF LOUISIANA

OSCAR DASTE AND SONS, INC.

VS

NO. 88-C-0355

RAYMOND DOBARD

- - -

In Re: Raymond Dobard, applying for Reconsideration of this Court's Order dated March 11, 1988; to the Court of Appeal, Fourth Circuit, No. CA-7591; Parish of Orleans Civil District Court, Div. "D", No. 82-2723.

- - -

April 4, 1988

Reconsideration denied.

Petition for writ of mandamus denied.

JCW

JAD

PFC

WFM

JLD

HTL

LFC

Supreme Court of Louisiana

April 4, 1988

/s/ FRANS J. LABRANCHE, JR.

Clerk of Court

For the Court

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U.S.C. Title 28 Section 1257 (3);
State Courts; Appeal; Certiorari

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.

42 USC 1985 (2).

42 USC 1985, gives to every citizen involved in litigation the right to be free from a conspiracy for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any state or territory, with intent to deny any citizen the equal protection of the laws, or to injure him, or his property for lawfully enforcing or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws.

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